

IC 35-33.5-3

Chapter 3. Duties of the Court

IC 35-33.5-3-1

Authorization of warrant or extension; determinations by court; examinations under oath; in camera inquiries

Sec. 1. (a) A court may enter an order authorizing a warrant or an extension if, based on the facts submitted by an applicant, the court determines the following:

(1) Probable cause exists to believe that the person whose communications are to be intercepted is committing, has committed, or may commit a designated offense.

(2) Communications concerning the designated offense identified in the warrant application are likely to be obtained through the requested interception.

(3) Exigent circumstances are present that require the preservation of secrecy where there is a reasonable likelihood that a continuing investigation would be prevented if a person subject to investigation was alerted to the fact that the investigation was occurring.

(4) A place or facility from which communications are to be intercepted is:

(A) being used or about to be used by;

(B) listed in the name of;

(C) leased to; or

(D) commonly used by;

a person who is committing, has committed, or may commit a designated offense.

(5) Investigative procedures:

(A) have been tried but have failed;

(B) are unlikely to succeed; or

(C) are too dangerous to attempt.

(b) In making a determination of probable cause required under subsection (a)(1) before a warrant may be issued by the court, the court may examine under oath any person. The court shall order the court reporter to:

(1) prepare a verbatim transcript of an examination made under this subsection; and

(2) attach the transcript to the application for the warrant.

(c) In making a determination of probable cause required under subsection (a)(1) before a warrant may be issued by the court, if there is no corroborative evidence offered in support of the allegation of probable cause, the court shall inquire in camera concerning:

(1) the identity of any informants; or

(2) any additional information the court considers relevant to a determination of probable cause to believe that the person whose communications are to be intercepted is committing, has committed, or may commit a designated offense.

(d) The court may modify the application and authorize a warrant or an extension that is more limited in authority for interception than

the warrant or extension that was requested by the applicant.
As added by P.L.161-1990, SEC.3.

IC 35-33.5-3-2

Information required in warrant

Sec. 2. A court that issues a warrant or an extension shall specify the following information in the warrant:

- (1) The identity of the law enforcement agency that the warrant directs to make the interception.
- (2) The identity of the person, if known, whose communication is to be intercepted.
- (3) The nature and location of the facility or place from which the communication is to be intercepted.
- (4) The type of communication to be intercepted and a statement of the designated offense to which the communication relates.
- (5) That the interception must be conducted in a manner that minimizes the interception of communication that:
 - (A) is not relevant to the designated offense; and
 - (B) is not authorized by the warrant or extension.
- (6) That methods required by the court to minimize the interception of irrelevant communications include the immediate termination by a law enforcement officer of the recording of a communication that is clearly irrelevant to the investigation of a designated offense.
- (7) The duration during which the interception is authorized, including a statement as to whether the interception automatically terminates once the described communication is initially obtained.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-3-3

Automatic review of issuance; warrant stayed; extension excepted

Sec. 3. (a) If a court grants a warrant under this article, the prosecuting attorney shall apply to the court of appeals for an ex parte de novo review of the issuing court's decision. Issuance of the warrant is subject to automatic review and shall be given priority over all other cases. The prosecuting attorney is entitled to expedited review of the issuance of the warrant under rules adopted by the supreme court. Notwithstanding IC 33-25-1-5, the chief judge of the court of appeals shall assign these cases for review to a district other than the district where the circuit or superior court that granted the warrant is located.

(b) In the review, the court of appeals shall review the reasons for the issuance of the warrant and determine whether the requirements of this article have been met.

(c) The court of appeals may affirm, modify, or overrule the order of the court to which the application was made. The court of appeals may not increase the authority for interception beyond that requested in the application.

(d) A warrant must be stayed until the court of appeals completes the review.

(e) Issuance of an extension is not subject to automatic review under this section.

As added by P.L.161-1990, SEC.3. Amended by P.L.98-2004, SEC.143.